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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,564	08/15/2006	Michael Komowski	016906-0509	9060

22428 7590 08/31/2010  
FOLEY AND LARDNER LLP  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER
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MILLER, SAMANTHA A

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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08/31/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,564	<b>Applicant(s)</b> KOMOWSKI, MICHAEL	
	<b>Examiner</b> SAMANTHA A. MILLER	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 10-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Receipt of applicant's amendment filed on 8/18/2009 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13, 17, and 21 state "the third region indirectly adjoins a lateral surface in a region of the externally surrounding rim via the intermediate region" it is unclear what applicant is considering a lateral surface and a region.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by PIERRE (FR 2,771,966).

PIERRE teaches:

1. A circumferential surface (Fig.4) of a part-cylinder, wherein the circumferential surface forms a first region (three surfaces 50, Fig.4), two circle segment surfaces (48 on each side) forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region (48), an externally surrounding rim (64), which is arranged substantially in two planes (along the edge of 50 and inward, Fig.4), projects outward and serves to bear against correspondingly designed beating surfaces, at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof, at least a second rim (top surface of 48 and side of 48) projecting perpendicularly outward (side rim of 48 projects out from 48 and 50) from running along the circumferential surface, the circle segment surfaces, or a combination thereof, and at least one opening (58 and 52) in at least one segment of the first region, one or both of the second regions, or a combination thereof, wherein the at least one segment is delimited by the externally surrounding rim and the second rim (Fig.4).

2. The second rim is provided in the first region of the drum flap (being between the first and second region).

3. The second rim is provided in the second region (being between the first and second region).

4. The second rim is arranged in a plane in which a pivot axis (from 51) also lies, and projects outward, wherein the plane in which the second rim lies is arranged in an

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angle between the two planes (90 degree angle) in which the externally surrounding rim is arranged.

6. A circular region having a thickness designed to match the externally surrounding and second rims, is provided in a region of a pivot axis (Fig.4).

10. Two outwardly protruding bearing journals (51) are provided on a pivot axis.

11. An air guidance housing (Fig.3), and a drum flap (40) arranged in the air guidance housing, wherein the drum flap comprises: a circumferential surface of a part-cylinder, wherein the circumferential surface forms a first region (three surfaces 50, Fig.4), two circle segment surfaces forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region (48 on each side, Fig.4), an externally surrounding rim (64), which is arranged substantially in two planes (along the edge of 50 and inward, Fig.4), projects outward and serves to bear against correspondingly designed bearing surfaces (Fig.4), at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof, at least a second rim (top surface of 48 and side of 48) projecting perpendicularly outward (side rim of 48 projects out from 48 and 50) from running along the circumferential surface, the circle segment surfaces, or a combination thereof, and at least one opening (58, and 52) in at least one segment of the first region, one or both of the second regions, or a combination thereof, wherein the at least one segment is delimited by the externally surrounding rim and the second rim.

12. The drum flap serves as an air distributor flap and/or as a temperature mixing flap (English Abstract).

***Allowable Subject Matter***

Claims 13-21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

Applicant's arguments with respect to claims 13-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 4/28/2010 with regard to claims 1-12 have been fully considered but they are not persuasive.

Applicant contends that PIERRE does not teach an externally extending rim that extends perpendicularly outward from along two edges. However, claims are given the broadest reasonable interpretation. In this case, claim 1 states "an externally surrounding rim, which is arranged substantially in two planes, projects outward and serves to bear against correspondingly designed beating surfaces". PIERRE teaches a externally surrounding rim (64) that is arranged substantially in two planes (along the edge of 50 and inward, Fig.4) projects outward (from 50) and serves to bear against correspondingly designed bearing surfaces.

Applicant contends that PIERRE does not teach an externally extending rim that extends perpendicularly outward from along two edges. However, claims are given the broadest reasonable interpretation. In this case, claims 1 and 11 states "at least a second rim running along the circumferential surface, the circle segment surfaces, or a

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combination thereof, at least a second rim projecting perpendicularly outward from running along the circumferential surface, the circle segment surfaces, or a combination thereof". PIERRE teaches at least a second rim (around the top and side edges of 48) running along the circumferential surface, the circle segment surfaces, or a combination thereof (runs across the circumferential surface and the circle segment surfaces), at least a second rim (top surface of 48 and side of 48) projecting perpendicularly outward (side rim of 48 projects out from 48 and 50 running along the circle segment surfaces) from running along the circumferential surface, the circle segment surfaces, or a combination thereof,

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272-9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller  
Examiner  
Art Unit 3749  
8/14/2010

/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749